

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

<b>DELTA L. EADY,</b>	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. <b>02-1225-MJR</b>
	)	
<b>BUREAU of PRISONS, et al.,</b>	)	
	)	
Defendants.	)	

**NOTICE REGARDING MOTION for SUMMARY JUDGMENT**

**PROUD, Magistrate Judge:**

Defendant Hughston has filed a Motion for Summary Judgment (**Doc. 151**), which is supported by exhibits, including an affidavit.

*Lewis v. Faulkner*, 689 F.2d 100 (7th Cir. 1982) requires that, when a defendant has filed a motion for summary judgment supported by affidavit, “a prisoner who is a plaintiff in a civil case and is not represented by counsel is entitled to receive notice of the consequences of failing to respond with affidavits to a motion for summary judgment.” *Lewis*, at 102.<sup>1</sup>

Plaintiff is hereby notified that **Fed.R.Civ.P. 56(e)** provides that:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party’s pleading, but the adverse party’s response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

*Lewis* requires that a *pro se* plaintiff be warned that “any factual assertion in the

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<sup>1</sup>The Court invites defense counsel to review the Seventh Circuit’s suggestion that it should be the practice of defense counsel to include the required notice in the motion. See, *Lewis*, at 102-103.

movant's affidavits will be accepted by the district judge as being true unless the plaintiff submits his own affidavits or other documentary evidence contradicting the assertion.”

**Plaintiff is hereby notified** that he may not rest upon the allegations of his pleadings at this stage. Simply restating the allegations of the complaint will not defeat the motion. The Court will accept as true any factual assertion in defendants’ affidavits unless plaintiff submits his own affidavits or other documentary evidence contradicting the assertion.

**Plaintiff’s response to defendant’s motion is due by November 19, 2007.**

**IT IS SO ORDERED.**

**DATED: October 16, 2007.**

**s/ Clifford J. Proud**  
**CLIFFORD J. PROUD**  
**U.S. MAGISTRATE JUDGE**